

EXHIBIT 9

DEFENDANT'S FMLA POLICY

University Policies

Family and Medical Leave Act (FMLA) Rights

HR-05-20



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About This Policy

Effective Date:

10-28-2009

Date of Last Review/Update:

02-21-2021

Responsible University Office:

Human Resources

Responsible University Administrator:

Vice President and Chief Human Resources Officer

Policy Contact:

IU Human Resources <<http://hr.iu.edu/welcome/contact.htm>>

askHR@iu.edu

Policy Feedback:

If you have comments or questions about this policy, let us know with the policy feedback form [</contact/index.html>.](#)

Scope

This policy applies to all Staff and Temporary employees in Indiana University.

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Policy Statement

1. It is the policy of Indiana University to provide a leave of absence in accordance with the Family and Medical Leave Act (FMLA) of 1993 [<https://www.dol.gov/agencies/whd/fmla>](https://www.dol.gov/agencies/whd/fmla). Before designating an FMLA leave, administrators should consult the FMLA Procedures [<http://hr.iu.edu/policies/uwide/fmla_procedures.html>](http://hr.iu.edu/policies/uwide/fmla_procedures.html).
 - a. This policy information is only a general summary of the steps to follow when considering a request or need for family or medical leave. Refer to the complete FMLA Procedures

2. An employee may request a leave, or may provide a department with sufficient information to make the department aware of an absence that may be eligible for FMLA protection. In either case, follow the FMLA Procedures http://hr.iu.edu/policies/uwide/fmla_procedures.html to see if and how the FMLA applies to the employee. The department may seek additional information from the employee to determine whether FMLA applies.
 - a. If a department is aware that the reason for an absence from work qualifies under FMLA, the absence must be designated as FMLA leave, *even if the employee does not request it*. Complete the required forms and provide copies as noted.
3. An FMLA leave may be initiated by the employee or the department at any point in a calendar year when the need for the leave arises. However, if an employee is on FMLA leave that extends from one calendar year to the next, new FMLA forms must be processed at the beginning of the new calendar year in order to keep the leave in effect.
4. For information regarding forms and FMLA processing, contact the campus human resources office.
5. In accordance with the FMLA, eligible employees may receive up to a total of 12 weeks of leave in a 12-month period, defined as a calendar year. Employees will be entitled to return to the same or an equivalent position at the conclusion of the leave, if they are able to perform the essential functions of the position.
6. Medical and dental benefits will be maintained during the leave so long as the employee intends to return and does actually return to work.
 - a. Employees on an FMLA leave continue to be responsible for paying their share of premiums for benefit plans. Contact the campus human resources office for more information.

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Reason for Policy

The Family Medical Leave Act of 1993 as amended is a lengthy, complex law with over a hundred pages of federal regulations written to explain and aid in the application of the act. This policy summarizes the key points of the act and its regulations to provide Indiana University managers and employees with the tools necessary to administer the law.

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Procedures

1. Eligibility

- a. To be eligible to take an FMLA leave, an employee must meet *all* of these criteria:
 - i. The employee must have been employed by IU for at least 12 months. Any portion of a week that the employee is on the payroll counts as a full week for FMLA eligibility. Employment does not

1. Separate periods of employment in which the break in service exceeds seven (7) years will not be used to determine FMLA eligibility.
- ii. For the 12 months immediately preceding the first day of the FMLA leave, the employee must have worked at least 1,250 hours. *These hours must be actual work hours, not compensated hours.* Hours using any type of paid time off benefits or holiday time do not count.
- iii. The 1,250 work hours requirement also exists when an employee is reapplying for an FMLA for a new calendar year. When the need for an FMLA extends past December 31st, the employee must have worked at least 1,250 actual work hours in the 12 months immediately preceding the request for the leave in the new calendar year.
- iv. The employee must not have already received 12 weeks of FMLA leave in the current calendar year.

b. Time in the military service covered under the Uniformed Services Employment and Reemployment Rights Act (USERRA) will count towards fulfilling the length of employment and hours of work requirements to be eligible for an FMLA leave.

2. Qualifying reasons

- a. The following reasons qualify an employee for FMLA:
 - i. Birth of a child and to care for a newborn child of the employee or spouse as defined by Indiana law.
 - ii. Placement with the employee of a child through adoption or foster care of a child
 - iii. Care for any of the following who has a serious health condition: the employee's spouse, the employee's child under 18, or the employee's parent
 - iv. Care for the employee's child 18 or older who has a serious health condition and is incapable of self-care because of a mental or physical disability
 - v. A serious health condition that renders the employee unable to perform the functions of their job
 - vi. A qualifying exigency which occurs while the employee's spouse, domestic partner, child, child of the domestic partner, or parent is on covered active duty or has been notified of an impending call or order to covered active duty in the Armed Forces. The term covered active duty means duty during deployment to a foreign country. Qualifying exigencies to manage the servicemember's affairs are described on the DOL form Certification of Qualifying Exigency for Military Family Leave <<http://www.dol.gov/whd/forms/WH-384.pdf>>.
- b. A serious health condition for purposes of the FMLA means
 - i. An illness or injury that involves an overnight stay in a health care facility and any subsequent treatment in connection with such stay; or,

- ii. Continuing treatment by a health care provider including any one or more of the following
 - 1. a period of incapacity of more than 3 consecutive, full calendar days and subsequent treatment by a health care provider in-person two or more times within 30 days of the first day of incapacity
 - 2. treatment by a health care provider in-person on at least one occasion which results in a regimen of continuing treatment
 - 3. pregnancy and prenatal care
 - 4. chronic condition which requires visits at least twice a year for treatment by a health care provider over an extended period of time and may cause episodic rather than a continuing period of incapacity
 - 5. permanent or long-term conditions
 - 6. conditions requiring multiple treatments by a health care provider including recovery time
- c. Time taken to care for a covered servicemember injured in the line of covered active duty may qualify for FMLA. The provisions governing these situations are covered in the Military Caregiver Leave section of this policy.

3. Leave period

- a. An eligible employee may take up to 12 workweeks of leave during a 12-month period defined as a calendar year. Eligible employees are entitled to a new 12-week FMLA leave each calendar year. Unused portions of the 12-week FMLA leave may not be carried over between calendar years. An employee's scheduled shifts will be counted for purposes of determining the amount of FMLA leave taken.
- b. If the purpose of the leave is to care for a sick family member or one's own serious health condition, the employee may take the leave intermittently or by means of a reduced work schedule.
 - i. Such leaves are subject to the qualifications and limitations set forth in the FMLA federal regulations.
 - ii. Employees must make a reasonable effort to schedule the intermittent leave so it does not disrupt operations. Under certain circumstances, units may place an employee who is on an intermittent leave or a reduced work schedule in another position with equivalent pay and benefits. This placement is considered to be a temporary transfer and should be discussed with the campus human resources office in advance.
- c. When an employee is on an FMLA leave to care for a family member and the leave is terminated by the death of the family member, the employee may be away from work for funerals or bereavement in accordance with the applicable time off policy
<http://hr.iu.edu/benefits/pto.html>.

4. Call in and time off procedures for Staff employees

- a. Employees must follow department's procedures for requesting leave and calling in absences. Failure to do so may result in the time not being approved. In addition, if an employee simply calls in sick, does not follow the department's call-in procedure, or does not provide sufficient information, the time off may not be designated as FMLA.
- b. Beginning on the first day of the leave, staff must use all time off accruals as part of the 12-week FMLA leave.
 - i. An employee's compensatory time must be used prior to the use of any other time off accruals.
 - ii. After all compensatory time is used, the employee may choose the order in which their remaining time-off accruals are expended. Time off accruals that must be used during FMLA leave include holidays, income protection time (sick time), vacation, and PTO for Exempt staff and Non-Exempt Non-Union PAO and PAU staff.
 - iii. The requirement that an employee must use time off accruals to cover FMLA leave applies to any FMLA leave, including a leave that is taken either intermittently or through a reduced work schedule.
 - iv. All time missed in a work day due to an FMLA must be charged to time off accruals, including charges to PTO for partial day absences for Exempt staff and Non-Exempt Non-Union PAO and PAU staff.
- c. Prior to the start of an FMLA or as soon as it is feasible to do so, the employee must decide and notify the supervisor on which time off accruals they want to use after compensatory time is exhausted.
- d. When the time off accruals are exhausted, the remainder of the FMLA leave is without pay. This time and the time charged to accrued time off benefits are to be recorded on the attendance record as FMLA leave.
- e. When it is known that the period without pay will exceed 30 days, the department is to process the appropriate HRMS documentation to place the employee on a leave of absence for the balance of the FMLA leave.
- f. University service credit continues to accrue during a FMLA leave.

5. Call in and time off procedures for Temporary employees

- a. Employee must follow department's procedures for requesting leave and calling in absences. Failure to do so may result in the time off not being approved. In addition, if an employee simply calls in sick, does not follow the department's call-in procedure, or does not provide sufficient information, the time off may not be designated as FMLA.
- b. An FMLA leave is unpaid for eligible Temporary employees.

6. Reinstatement

- a. If a department requires a fitness for duty to be completed prior to an employee's reinstatement, the department must provide FMLA Form #3 Intent to Return and Fitness for Duty/Medical

- b. At the conclusion of the leave, the employee will be returned to the same position held at the time the leave began or to an equivalent position with equivalent pay, benefits, and working conditions, e.g., the same shift or the same or an equivalent work schedule.
 - i. Employees on an FMLA leave are still subject to a reduction in force or reassignment that would have occurred otherwise had the employee been working.
- c. Infrequently, the reinstatement of a Key Employee would result in "substantial and grievous economic injury" to the university. In such cases, the campus human resources office must approve an exception to the reinstatement rule. With the approval of the campus human resources office, the department is to inform the Key Employee--before the leave begins--that reinstatement might not be available when they return to work.
 - i. Key Employees are Exempt staff and Non-Exempt Non-Union PAO and PAU staff and academic employees who are among the highest ten percent-compensated employees at IU.

7. Proper notice of FMLA by employee

- a. Employees must provide at least 30 days advance notice of an anticipated FMLA leave. It is understood that under some circumstances it is not practical to provide 30 days notice. In these cases, employees must provide notice as soon as practicable. In all cases, employees must provide the department with sufficient information and must cooperate fully with the department or risk having the FMLA delayed or denied.
- b. [Form #1 FMLA Leave Notice of Designation, Request, and Approval](#)
<<http://hr.iu.edu/pubs/forms/fmla/form1.pdf>> is available for this purpose; however, employees may submit a request for an FMLA leave by other means (memo, e-mail, etc.). If employees do not give proper notice of a clearly foreseeable leave or does not cooperate fully with the department, the department can delay the leave for up to thirty (30) days after receiving notice of the need for an FMLA leave.

8. Certification for Leaves for Serious Health Conditions or qualifying exigencies

- a. Serious Health Conditions
 - i. In cases where an FMLA leave is to care for the serious health condition of the employee, a spouse, child as identified in Paragraph D.2., or parent of the employee, the employee must provide medical certification on the applicable Medical Certification form [#2E for Employee](#) <<http://hr.iu.edu/pubs/forms/fmla/form2e.pdf>> or [#2F for Family](#) <<http://hr.iu.edu/pubs/forms/fmla/form2f.pdf>> . The department should request the certification at the time employee gives notice of leave or within five (5) business days thereafter. Once requested, it is the employee's responsibility to provide the department with the medical certification within 15 calendar days.
 - ii. If the certification is incomplete or unclear, the employee is to be given 7 additional calendar days to provide more complete information.

by the campus human resources office may contact the employee's health care provider for
clarification and/or authentication of the employee's medical certification.

- iv. The campus human resources office may require a second opinion from a health care provider
designated by the campus human resources office. The employee's department will pay the
cost of the second opinion, if required.
- v. If there is a difference between the medical certification and the second opinion, the campus
human resources office may require a third opinion from a mutually agreeable provider. Again,
the employee's department will pay the cost of the third opinion.
- vi. Employees may be asked to recertify the need for the FMLA after 30 days from receipt of past
medical certification, in less than 30 days in certain circumstances such as a change in the
employee's condition, or every six (6) months.
- vii. All medical certifications and related information that describe the health or medical history or
condition of the employee or family members must be handled as confidential medical
information. Such information must be stored in a locked file separate from the personnel file.
- viii. When certification is requested, it is the employee's responsibility to provide the employer with
timely, complete, and sufficient certification and failure to do so may result in delay or denial of
FMLA leave.

b. Qualifying exigencies

- i. In cases where an FMLA leave is for a qualifying exigency, the department should provide the
employee with a copy of the DOL form Certification of Qualifying Exigency for Military Family
Leave <<http://www.dol.gov/whd/forms/WH-384.pdf>> to be completed by the employee. The
completed form along with the documentation that the employee provides will be used to
determine if the leave request qualifies and the length of the leave.

- 1. The campus human resources office is responsible for coordinating all requests for leaves
taken under this provision for a qualifying exigency.

- ii. When certification is requested, it is the employee's responsibility to provide the employer with
timely, complete, and sufficient certification and failure to do so may result in delay or denial of
FMLA leave.

9. Resolution of problems

- a. Employees have the right to a prompt investigation and response to a question or problem
concerning the application of this policy and the Family and Medical Leave Act of 1993. If a
department head does not satisfactorily resolve the employee's concerns, they may take the
inquiry or problem to the campus human resources office for immediate attention. The campus
human resources office is to respond within two weeks.

10. Posting of FMLA

- a. Information about the FMLA will be provided to all employees by posting notices in conspicuous places within the department.
 - i. Information is available from the campus human resources office.
- b. Also, information concerning the Family and Medical Leave Act of 1993 will be included in any new editions of handbooks or other publications that describe employee benefits or contain policies and practices that are of general interest to employees.

11. Department's designation and approval of FMLA

- a. It is the department's responsibility to designate any absence that meets the eligibility requirements of the FMLA as family/medical leave. The designation of FMLA will occur either as a result of an employee request for FMLA leave or when the department becomes aware that the employee's absence qualifies as FMLA leave, even though the employee may not have requested FMLA leave.
- b. Within five business days of receipt or initiation of Form #1 FMLA Leave Notice of Designation, Request, and Approval <<http://hr.iu.edu/pubs/forms/fmla/form1.pdf>>, the department head or designee is to notify the employee whether the leave qualifies and will be counted as FMLA leave. The department will complete the applicable section of the bottom of this form. Copies will be retained in departmental FMLA files and sent to the campus human resources office.
- c. An employee's rights to FMLA may be denied or delayed only for the following reasons:
 - i. timely advance notice of foreseeable leave is not given;
 - ii. timely submission of required and sufficient medical certification is not made by the employee;
 - iii. the employee fails to provide required fitness to return to work certification;
 - iv. the employee expresses an intention not to return to work;
 - v. the employee fraudulently requests or obtains FMLA;
 - vi. the employee is employed elsewhere while on FMLA leave without the written approval of the department head
- d. An FMLA leave should start immediately if an FMLA-eligible employee who is under Worker's Compensation for a work-related injury declines a modified position assignment offered under Worker's Compensation.

12. Retroactive designation

- a. If the department fails to designate an employee's eligible absence as FMLA, it may retroactively designate the absence as FMLA leave if: 1) the employee has been given notice and; 2) either the retroactive designation does not harm the employee, or the department and employee have mutually agreed to retroactively designate the absence as FMLA.
- b. The ability to retroactively designate an employee's absence as FMLA, does not apply to absences in which the employee did not give the appropriate amount of notice or did not follow the unit's call-in procedure.

13. Military caregiver leave

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- a. Military Caregiver Leave is FMLA leave to care for a covered servicemember who has suffered serious injury or illness in the line of covered active duty. The term covered active duty means duty during deployment to a foreign country.
- b. A covered servicemember means a current member of the Armed Forces, National Guard or Reserves who is undergoing medical treatment, recuperation, therapy, is in outpatient status, or is otherwise on the temporary disabled list for a serious injury or illness or is a veteran undergoing treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces, National Guard, or Reserves, at any time during a period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
- c. For purposes of this section, the term 'serious injury or illness' means:
 - i. In the case of a member of the Armed Forces, National Guard, or Reserves, an injury or illness that was incurred in line of duty on active duty in the Armed Forces (or existed before the beginning of active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and
 - ii. In the case of a veteran who was a member of the Armed Forces, National Guard, or Reserves at any time during a period described in paragraph P.2. above, a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred in line of duty on active duty in the Armed Forces (or existed before the beginning of active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.
- d. An employee who has a qualified family relationship with a covered servicemember may take up to 26 weeks of leave during a single 12-month period. A qualified family relationship is a spouse, domestic partner, parent, child or next of kin. Contact the campus human resources office to determine if a qualified family relationship exists.
 - i. The leave entitlement described in this paragraph applies on a per-covered servicemember, per-injury basis, such that an eligible employee may be entitled to take more than one leave if the leave is to care for a different covered servicemember or to care for the same covered servicemember with a subsequent serious illness or injury.
 - ii. An employee may have an FMLA leave for up to 12 weeks for one of the qualifying reasons covered in paragraph D. above in the same 12-month period in which an FMLA leave is taken to care for a covered servicemember.
 - iii. No more than 26 weeks total of FMLA leave may be taken within any single 12-month period.
- e. The department should provide the employee with a copy of the DOL Form Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave <<http://www.dol.gov/whd/forms/WH-385.pdf>> to be completed by the employee and an authorized military health care provider of the covered servicemember. The employee may present certain

for purposes of certification that must be accepted by the department.

- i. Recertifications and second or third opinions are not permitted.
- ii. If the certification is incomplete or unclear, the employee is to be given 7 additional calendar days to provide more complete information.
- iii. The campus human resources office or a person designated by the campus human resources office may contact the covered servicemember's health care provider for clarification and/or authentication of the medical certification.
- f. In all instances when certification is requested, it is the employee's responsibility to provide the employer with complete and sufficient certification and failure to do so may result in delay or denial of FMLA leave.
- g. The campus human resource office is responsible for coordinating all requests for leaves taken to care for a covered servicemember.

14. Discretionary leave

- a. Leaves will not be granted for any of the reasons that qualify for a leave under the FMLA unless the employee has obtained a FMLA leave and has depleted the 12-week entitlements. Additional time may then be requested under Discretionary Leave of Absence policy for the same reason as the FMLA leave; however, all the rights and entitlement provided under the FMLA are not applicable.
- b. If an employee or an absence does not meet FMLA eligibility or qualification criteria, the employee may request to use accrued time off or request a discretionary leave of absence under the provisions of the applicable personnel policy.

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Sanctions

An employee who fraudulently obtains an FMLA leave is subject to disciplinary action, up to and including termination.

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History

February 2021

Updated the staff employee group terms due to Job Framework Redesign Project.

November 2019

Updated the effect of university holidays during an FMLA leave so that it is consistent with the Paid Parental Leave policy.

Removed same-sex domestic partner language.

October 2017

Removed Affidavit of Domestic Partnership.

October 2009

The Family Medical Leave Act was enacted in 1993 and has been amended numerous times. The most recent amendments were signed into law on October 28, 2009 and became effective on the date of signing.

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Previous Versions:

- Effective Dates: 10/24/2017 - 12/31/2018

Tracked changes PDF showing changes due to removed same-sex domestic partner language.

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Related Information

[Family and Medical Leave Act \(FMLA\) of 1993 <https://www.dol.gov/agencies/whd/fmla>](https://www.dol.gov/agencies/whd/fmla)

[FMLA Federal Regulations \(29 CFR part 825\) <https://www.ecfr.gov/cgi-bin/text-idx?SID=b70ab06a8d91acbbf43d84f76a0443fa&mc=true&tpl=/ecfrbrowse/Title29/29cfr825_main_02.tpl>](https://www.ecfr.gov/cgi-bin/text-idx?SID=b70ab06a8d91acbbf43d84f76a0443fa&mc=true&tpl=/ecfrbrowse/Title29/29cfr825_main_02.tpl)

[FMLA Procedures <http://www.hr.iu.edu/policies/uwide/fmla_procedures.html>](http://www.hr.iu.edu/policies/uwide/fmla_procedures.html)

[FMLA Q and A <http://www.hr.iu.edu/policies/uwide/fmla_q.html>](http://www.hr.iu.edu/policies/uwide/fmla_q.html)

[Certification of Qualifying Exigency for Military Family Leave <http://www.dol.gov/whd/forms/WH-384.pdf>](http://www.dol.gov/whd/forms/WH-384.pdf)

[Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave <http://www.dol.gov/whd/forms/WH-385.pdf>](http://www.dol.gov/whd/forms/WH-385.pdf)

Related Forms

- [FMLA Definition of Serious Health Conditions <http://hr.iu.edu/pubs/forms/fmla/FMLA-DefSeriousIllness.pdf>](http://hr.iu.edu/pubs/forms/fmla/FMLA-DefSeriousIllness.pdf)

- [FMLA Form 1 Leave Notice of Designation, Request, & Approval <http://hr.iu.edu/pubs/forms/fmla/form1.pdf>](http://hr.iu.edu/pubs/forms/fmla/form1.pdf)

- Essential and Marginal Job Functions Worksheet (Word 2007) <<http://hr.iu.edu/pubs/forms/essential.docx>>
- FMLA Form 2E Medical Certification for EMPLOYEE <<http://hr.iu.edu/pubs/forms/fmla/form2e.pdf>>
- FMLA Form 2F Medical Certification for FAMILY <<http://hr.iu.edu/pubs/forms/fmla/form2f.pdf>>
- FMLA Form 3 Intent to Return and Fitness for Duty/Medical Release
<<http://hr.iu.edu/pubs/forms/fmla/form3.pdf>>
- Medical Recertification Request <<http://hr.iu.edu/pubs/forms/fmla/request.pdf>>
- Tracking Sheet <<http://hr.iu.edu/pubs/forms/fmla/attendance.pdf>>